

Docket No. 2013-186-C

**MOTION TO WAIVE
HEARING AND FOR
EXPEDITED REVIEW**

The Joint Applicants move pursuant to S.C. Code Reg. 103-829 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission") that the Commission perform an expedited review of the Application. The Joint Applicants request that the Commission admit the Application, all prefiled testimony and exhibits into the record and use its discretionary authority to informally dispose of the proceeding without holding a formal hearing. In support of this motion the Joint Applicants would show the following:

1. As described in detail in the Application, Sage LLC seeks the same authority that Sage Inc. currently has to provide telecommunications services in South Carolina. Sage LLC and Sage Inc. jointly seek approval to complete a *pro forma* internal structural change whereby all of Sage Inc.'s assets will be assigned to Sage LLC. Sage Inc.'s customers will continue to receive the same high quality service, at the same rates and under the same terms and conditions.

2. TSC Acquisition Corporation ("TSC") is the corporate parent of the Joint Applicants. Sage Inc. was authorized to provide local exchange and interexchange telecommunications services in South Carolina by Commission Order Number 2008-4 on January 11, 2008.

3. Sage LLC intends to use the same facilities currently used by Sage Inc. and will rely on TSC to provide the financial resources and support necessary for it to serve the South Carolina market and provide its services on a permanent basis.

4. The Joint Applicants have published notice of the filing of the application in area newspapers as required by the Commission. The deadline for filing petitions to intervene in the proceeding was June 24, 2013. The South Carolina Office of Regulatory Staff ("ORS") and the S.C. Telephone Coalition ("Coalition") are the only intervenors in this proceeding. ORS and the Coalition have indicated that they do not object to this motion. No other comments or petitions to intervene have been filed.

5. Sage LLC and Sage Inc. filed the verified Direct Testimony of Joseph P. Holop in support of the Joint Application. Mr. Holop is the Chief Operations Officer of Sage LLC. Mr. Holop's testimony describes the operations and business strategy of Sage LLC; the relationship between Sage LLC, Sage Inc., and TSC; and Sage LLC's financial, technical, and managerial capability to provide the proposed services. He also described the proposed *pro forma* internal

structural change whereby all of Sage Inc.'s assets and customers will be transferred to Sage LLC.

6. The Joint Applicants are informed and believe that there are no issues in dispute between the parties, and the Application, testimony and exhibits filed with the Commission offer a complete record sufficient to form the basis for an ultimate determination in this matter.

ARGUMENT

7. Sage LLC filed its Application pursuant to S.C. Code Ann. § 58-9-280 seeking a Certificate of Public Convenience and Necessity to provide interexchange telecommunications services. Section 58-9-280(B) which applies to applications for local exchange authority provides that "[a]fter notice and an *opportunity to be heard*, the Commission may grant a certificate to operate as a telephone utility...to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC...." S.C. Code Ann. § 58-9-280(B) (Supp. 2012). The Joint Applicants seek authority pursuant to S.C. Code Ann. § 58-9-310 to complete the internal structural change and transfer assets from Sage Inc. to Sage LLC. Section 58-9-310 provides that "no telephone utility, without the approval of the Commission after due hearing and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, transfer, lease, consolidate or merge its property, powers...." Notice has been published as required by the Commission and any interested party, including the Joint Applicants, have thus had an *opportunity* for a hearing.

8. The Joint Applicants seek expedited review of the Application on the grounds that (1) due process requirements are satisfied if the Joint Applicants waive the right to a hearing when there is no disputed material issue of fact and (2) notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection.

9. Administrative agencies in South Carolina "are required to meet minimum standards of due process. Due process is flexible and calls for such protections as the particular situation demands." *Stono River Environmental Protection Association v. S.C. Dept. of Health and Environmental Control*, 406 S.E.2d 340, 342 (S.C. Sup. Ct. 1992); *Anonymous v. State Board of Medical Examiners*, 473 S.E.2d 870 (S.C. Ct. App. 1996) citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

The Administrative Procedures Act ("APA") provides that "in a contested case, all parties must be afforded an opportunity for hearing after notice not less than thirty days." S.C. Code Ann. § 1-23-320(a) (Supp. 2012). The provisions of the APA ensure that procedural due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for contested cases. "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." S.C. Code Ann. § 1-23-320(f) (Supp. 2012). Notice of the Application was published as required by the Commission. Therefore, notice and an opportunity for a hearing have been provided. The Office of Regulatory Staff and the S.C. Telephone Coalition do not object to the motion. The Joint Applicants respectfully request that the Commission dispose of the proceeding without requiring a formal hearing.

10. Holding a formal hearing "is appropriate where adjudicative facts involving the particular parties are at issue. Conversely, an agency may ordinarily dispense with hearing where there is no genuine dispute as to a material issue of fact." 2 Am. Jur.2d *Administrative Law* § 298. In addition, "the right to a hearing...may be waived." 2 Am. Jur.2d *Administrative Law* § 296. The Joint Applicants are requesting the hearing be waived and there are no intervenors

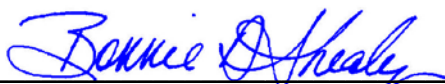
opposing the Joint Application. Therefore, there is no material issue of fact to be decided at a formal hearing.

11. Sage LLC presented information on the proposed transaction and the information required for certification under S.C. Code Section 58-9-280 in the Application and the direct testimony of Joseph Holop. Sage LLC will be relying on the same team of experts who have been providing a full array of services as Sage Inc. Therefore, the Commission is aware of the technical, managerial, and financial background relied upon by Sage LLC in its Application. Since ORS and the Coalition do not object to the motion and there is no other intervention, Sage LLC asserts that a full evidentiary hearing is unnecessary.

WHEREFORE, Sage LLC respectfully requests that the Commission informally dispose of the proceeding without holding a hearing and grant its request for a Certificate of Public Convenience and Necessity to Provide Interexchange Services, that the Commission waive the regulatory requirements requested in the Application, and that it be alternatively regulated pursuant to S.C. Code Section 58-9-585. Sage LLC and Sage Inc. also respectfully request that the Commission approve the *pro forma* structural change on an expedited basis.

Dated this 27th day of June, 2013.

ROBINSON, McFADDEN & MOORE, P.C.

By 

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